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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

In the Matter of 800 Data Base)
Access Tariffs and the 800)
Service Management System Tariff)

CC Docket No. 93-129

Northern Telecom Comments
on the Petitions for Waiver

Northern Telecom Inc. ("Northern Telecom"), through its counsel, hereby submits comments with respect to the waiver requests seeking relief from the Common Carrier Bureau's Order setting forth a requirement that the carriers publicly file certain costing models in the Commission's investigation of the 800 Data Base Access Tariffs.^{1/} Northern Telecom is located at 200 Athens Way, Nashville, Tennessee. Northern Telecom manufactures, sells and services telecommunications equipment to the local exchange carrier ("LEC") industry, including the Service Control Point equipment utilized for the 800 Data Base services at issue in this proceeding. Northern Telecom currently has telecommunications products in-service in each of the fifty (50) states.

^{1/} 800 Data Base Access Tariffs and the 800 Service Management System Tariff, 8 FCC Rcd 5132 (1993) ("Order"). The Commission requested comment on the waiver requests in a Public Notice Released September 27, 1993.

In Paragraph 29 of the Order, the Common Carrier Bureau required the LECs to file on the public record documented versions of all computer models used in the development of their 800 Data Base rates. U S West, GTE and Bellcore (on behalf of several LECs) have filed petitions with the Common Carrier Bureau seeking a waiver of the requirement to publicly file their models and related information.

Among the reasons identified in the waiver requests, the petitioners object to the public disclosure of the costing models on the basis that the models include confidential information received from switching vendors, including Northern Telecom, under obligations of confidentiality. In the Order, the Bureau mistakenly indicates that the costing models do not contain the confidential information of third parties.^{2/} Northern Telecom confirms that it has furnished its highly confidential and proprietary information to the LECs for their use in connection with the costing models.

Northern Telecom supports the waiver petitions on the basis that the filing and public disclosure of the costing models would result in the public disclosure of Northern Telecom's trade secrets, which would be likely to place Northern Telecom at a severe competitive disadvantage with respect to Northern Telecom's telecommunications equipment. The market for the

^{2/} Order at para. 29.

equipment at issue here is highly competitive, as evidenced by the numerous manufacturers that are reflected in the models.^{3/}

The following types of confidential and proprietary information of Northern Telecom have been provided to the LECs for their use in developing and maintaining the costing models at issue here:

- Current software and hardware provisioning rules, engineered capacities and unit level prices of components.
- Feature/function resource utilization information (to allow each model to price a physical interface and any feature/function provided through such interface).
- Detailed engineering and provisioning information.
- Detailed technical specifications and practices and software feature descriptions and design documents.
- Design and manufacturing information.
- Product/service information documents and application guides.

With the foregoing information, Northern Telecom's competitors would have detailed, nonpublic price and technical information concerning some of Northern Telecom's current and planned products. As an example of the harm that could be incurred by Northern Telecom if this information is publicly disclosed, a competitor with this information would have the means to determine the costs of specific interface types and

^{3/} In addition to Northern Telecom, information regarding this type of telecommunications equipment has been provided by AT&T, DSC Communications, Digital Equipment Corporation, Ericsson and IBM for use in the costing models. Equipment from all of those manufacturers is marketed in the U.S. and deployed in the LECs' 800 Data Base services networks.

service types on Northern Telecom's equipment. With these costs, Northern Telecom's competitors could modify their own pricing structures to Northern Telecom's competitive disadvantage. This would clearly cause irreparable harm to Northern Telecom.

In order to prevent the public disclosure of Northern Telecom's information, Northern Telecom entered into written confidentiality agreements with the petitioners in order to obtain assurances that none of Northern Telecom's confidential and proprietary information, which was furnished to them solely for use in connection with the costing models, would be used for any other purpose or would be publicly disclosed. Thus, Northern Telecom has taken appropriate actions to preserve the confidential nature of the information furnished to the carriers. Moreover, the proprietary nature of this type of information was confirmed in several recent decisions concerning the costing models used in the development of ONA rates.^{4/}

It is likely that any public disclosure of such information of Northern Telecom pursuant to the Order would require Northern Telecom to reevaluate the further provision of such information to the carriers. Northern Telecom is not obligated to continue to supply its information to the LECs, and

^{4/} Allnet Communications Services, Inc. v. Federal Communications Commission, 800 F. Supp. 984 (D.C.D.C. 1992); Commission Requirements for Cost Support Material To Be Filed with Open Network Architecture Access Tariffs, DA 91-1309, released October 18, 1991; Commission Requirements for Cost Support Material To Be Filed with Open Network Architecture Access Tariffs, DA 91-1592, released December 23, 1991; Commission Requirements for Cost Support Material To Be Filed with Open Network Architecture Access Tariffs, DA 92-129, released January 31, 1992; Allnet Communications Services, Inc., FOIA Control No. 92-266, FCC 92-356, released August 3, 1992.

would be reluctant to do so if it believed such information would no longer be kept confidential. In addition, Northern Telecom has certain rights in its agreements with the carriers to require the return or destruction of proprietary information provided by Northern Telecom.

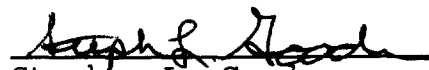
In its waiver petition, Bellcore has proposed an alternative for provision of information related to the costing models that includes disclosure to the Commission and certification by the vendors of the accuracy of the information reflected in the models. That alternative is intended to satisfy the Bureau's concerns while not jeopardizing the LECs' trade secrets or those of vendors, such as Northern Telecom. The procedures proposed by Bellcore in its alternative which are designed to protect such trade secrets are similar to the methods used in conjunction with the ONA tariff investigation.

While Northern Telecom continues to believe that the petitioners' requests for waivers of the requirement for public disclosure of their cost models should be adopted by the Common Carrier Bureau without a requirement for further disclosure of the models to others, Northern Telecom is willing to consider Bellcore's proposal or other alternatives, so long as (1) appropriate protections for the use and disclosure of Northern Telecom's confidential and proprietary information are established, and (2) any additional requirements imposed on Northern Telecom as an equipment vendor which are associated with such alternatives, such as Bellcore's proposed certifications by the vendors of the accuracy of the manner in which their

information is reflected in the models, should not be unduly burdensome and should be consistent with the information concerning the models that is available to the vendors.^{5/} Northern Telecom actively participated in the development of appropriate disclosure procedures in the ONA tariff investigation, and intends to do so here as well to ensure that adequate disclosure occurs without jeopardizing Northern Telecom's proprietary information or other interests.

Respectfully submitted,

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^{5/} Without knowing the details of the methods for disclosure and the specific safeguards to prevent the harmful dissemination of the proprietary information, Northern Telecom cannot give an unconditional consent. Northern Telecom believes, based on the experiences in the ONA tariff investigation, that appropriate procedures can be developed that should be acceptable to all interested parties. C.f., MCI Telecommunications Corporation, 58 RR2d 187, 190 (1985) (information released subject to an appropriate protective order to be issued by the General Counsel).